

BUSINESS ENTITY DESCRIPTIONS



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(Alternate formats for disabled persons are available upon request.)

The information provided in this pamphlet is being provided as general information and is not a comprehensive outline of all requirements for a business entity to transact business in North Dakota. It is not intended as a substitute for legal and/or tax counsel prior to organization, registration or licensing of a business. The Secretary of State's staff cannot provide legal advice regarding filings, transactions, taxes, financing, indemnification, shares, stock certificates, preparation of minutes or bylaws, or other matters of internal business management. If you require professional assistance on these or other tax or administrative law issues, contact a professional advisory of your choosing.

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Sole Proprietorship

Legally, and for tax purposes, the individual owner is the business. A business that is jointly owned by husband and wife who file a joint tax return is generally operated as a sole proprietorship.

The liabilities and profits of a sole proprietorship are personal to the owner. All of the sole proprietor's personal and business assets are at risk.

The sole proprietor has total control of the business. When the owner dies, the business ceases to exist with the assets and liabilities passing to the estate.

There are no administrative requirements other than obtaining appropriate licenses and registration of the trade name.

General Partnership

The legal form of a general partnership is created when there is an association of two or more persons, or other business entities, who become known as the general partners. The association of parties may be informal or their association may be formalized with a document known as a partnership agreement. While a partnership agreement is not required, it encourages specificity.

In a general partnership:

- Parties carry on all their trade and business for the joint benefit and profit of all the parties concerned.
- Invested capital may be limited or not.
- Contributions thereto may be equal or not.
- Organization benefits from broader management base and financial strength.
- Death or withdrawal of any general partner dissolves the general partnership.

Each general partner has a right:

- To participate in partnership management. The issue of control can be addressed with a partnership agreement.
- To share in the profits of the partnership.

Each general partner has joint and several liability for obligations of the general partnership. That means that each general partner has the potential of being personally indebted for each obligation of the general partnership. One general partner's actions can make another general partner personally liable on a contract. Similarly, the actions or torts of one general partner arising in the ordinary course of the partnership's business can result in another general partner being personally liable on a contract or in a lawsuit.

General partnerships file a partnership tax return but do not pay taxes; they are "pass-through" entities. Each general partner takes into account their share of general partnership income, losses, deductions and credits and reports them on the partner's tax return.

General partnerships do not require any formal organizational meeting or state filing requirements to come into existence. A partnership may choose to file statements with the Secretary of State according to N.D.C.C., Chapter 45-13. A general partnership must obtain appropriate licenses and register a Partnership Fictitious Name Certificate with the Secretary of State if a fictitious name is employed.

Limited Partnership

A limited partnership is composed of one or more general, and one or more limited partners. The general partners have management powers and are responsible for all partnership obligations. The defining characteristics of a limited partnership are that limited partners:

- Can invest capital in a business of the limited partnership;
- Take a share in the profits;
- Are not personally liable for the partnership's debts and obligations; and
- Generally do not participate in the management of the business operations.

Limited partnership existence commences:

- With the filing of the certificate of limited partnership with the Secretary of State; or
- Within 90 days after filing as designated in the certificate.

Limited partnerships may transact any business in North Dakota except the business of banking and insurance (insurer backing claims). Farming is allowable only if:

- Any partners that are corporations or limited liability companies are North Dakota farm corporations or limited liability companies organized according to N.D.C.C., Chapter 10-06.1.
- Any partners that are partnerships, other limited partnerships, limited liability partnerships, or limited liability limited partnerships and that may have other entities as partners are in compliance with N.D.C.C., Chapter 10-06.1.

The limited partnership files a tax return but pays no entity-level income tax or net worth tax. Each partner is taxed directly upon its respective distributive share of the limited partnership's profits.

A limited partnership must obtain appropriate licenses and register a Partnership Fictitious Name Certificate with the Secretary of State if a fictitious name is employed.

A limited partnership using a fictitious name in the transaction of business, must file a Partnership Fictitious Name Certificate with the Secretary of State. A fictitious name is a name other than the limited partnership name.

The registration of the Partnership Fictitious Name Certificate:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the names of the general partners can be identified.

Foreign Limited Partnership

A foreign limited partnership is one created under laws other than the laws of North Dakota. "Foreign" refers to limited partnerships created in jurisdictions out-of-state as well as out-of-country.

A foreign limited partnership must register with the Secretary of State:

- To transact business in North Dakota; or
- To obtain any license or permit issued according to North Dakota laws.

A foreign limited partnership using a name other than its limited partnership name must comply with the Partnership Fictitious Name Certificate requirement as described above.

Limited Liability Partnership

A limited liability partnership is essentially an ordinary general partnership that elects to become a limited liability partnership. The limited liability partnership must file a Limited Liability Partnership Registration with the Secretary of State to acquire limited liability status. This status limits the liability of a general partner. In all respects except liability, the limited liability partnership operates and is treated in the same manner as a general partnership.

A limited liability partnership using a fictitious name in the transaction of business, must file a Partnership Fictitious Name Certificate with the Secretary of State. A fictitious name is a name other than the limited liability partnership name.

The registration of the Partnership Fictitious Name Certificate:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the names of the managing partners can be identified.

Foreign Limited Liability Partnership

A foreign limited liability partnership is one created under laws other than the laws of North Dakota. "Foreign" refers to limited liability partnerships created in jurisdictions out-of-state as well as out-of-country.

A foreign limited liability partnership must register with the Secretary of State:

- To transact business in North Dakota; or
- To obtain any license or permit issued according to North Dakota laws.

A foreign limited liability partnership using a name other than its limited liability partnership name must comply with the Partnership Fictitious Name Certificate requirement as described above.

Limited Liability Limited Partnership

A limited liability limited partnership is essentially an ordinary limited partnership that elects to become a limited liability limited partnership. The limited liability limited partnership must file a Limited Liability Limited Partnership Registration with the Secretary of State to acquire limited liability status. This status limits the liability of a general partner. In all respects except liability, the limited liability limited partnership operates and is treated in the same manner as a limited partnership.

A limited liability limited partnership using a fictitious name in the transaction of business, must file a Partnership Fictitious Name Certificate with the Secretary of State. A fictitious name is a name other than the limited liability limited partnership name.

The registration of the Partnership Fictitious Name Certificate:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the names of the general partners can be identified.

Foreign Limited Liability Limited Partnership

A foreign limited liability limited partnership is one created under laws other than the laws of North Dakota. "Foreign" refers to limited liability limited partnerships created in jurisdictions out-of-state as well as out-of-country.

A foreign limited liability limited partnership must register with the Secretary of State:

- To transact business in North Dakota; or
- To obtain any license or permit issued according to North Dakota laws.

A foreign limited liability limited partnership using a name other than its limited liability limited partnership name must comply with the Partnership Fictitious Name Certificate requirement as described above.

Professional Limited Liability Partnership

A professional limited liability partnership, as the name implies, is a limited liability partnership made up exclusively of licensed professionals. Licensed professionals are those people who have been legally authorized to provide a professional service to the public that requires a license prior to rendering the service.

A professional limited liability partnership may render:

- One specific type of professional service and services ancillary thereto; or
- Two or more kinds of professional services that are specifically authorized to be practiced in combination under North Dakota's licensing laws of each of the professional services to be rendered.

A professional limited liability partnership is created, and otherwise operates and is treated, in the same manner as a limited liability partnership. However, at the time of registration with the Secretary of State, the professional limited liability partnership must also provide certification from the respective licensing board evidencing licensure of all partners.

A professional limited liability partnership using a fictitious name in the transaction of business, must file a Partnership Fictitious Name Certificate with the Secretary of State. A fictitious name is a name other than the professional limited liability partnership name.

The registration of the Partnership Fictitious Name Certificate:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the names of the managing partners can be identified.

Foreign Professional Limited Liability Partnership

A foreign professional limited liability partnership is one created under laws other than the laws of North Dakota. "Foreign" refers to professional limited liability partnerships created in jurisdictions out-of-state as well as out-of-country.

A foreign professional limited liability partnership must register with the Secretary of State:

- To transact business in North Dakota; or
- To obtain any license or permit issued according to North Dakota laws.

At the time of registration with the Secretary of State, the professional limited liability partnership must also provide certification from the respective licensing board evidencing licensure of all partners practicing in North Dakota.

A foreign professional limited liability partnership using a name other than its limited liability limited partnership name must comply with the Partnership Fictitious Name Certificate requirement as described above.

Limited Liability Company

A limited liability company is a legal entity that may be established by one or more individuals. Limited liability company existence begins:

- When articles of organization are filed with the Secretary of State; or
- Within ninety days after filing articles of organization as designated in the articles.

The Secretary of State grants a charter upon filing of articles of organization legally recognizing the limited liability company as a separate legal entity having its own rights, privileges, and liabilities distinct from those of its members.

A limited liability company combines the characteristics of a partnership and a corporation. Like a corporation, a limited liability company provides its members with limited liability regardless of the members' participation in management. Like a partnership, a limited liability company may be taxed under the flexible partnership rules, rather than the inflexible S corporation rules.

A limited liability company may be organized to transact any business except farming, banking, and insurance (insurer backing claims). An insurance agency selling insurance products may be formed as a limited liability company. Farming is permitted if the limited liability company is created under North Dakota's Corporate and Limited Liability Company Farming Act, N.D.C.C., Chapter 10-06.1.

A limited liability company using a trade name in the transaction of business must file a Trade Name Registration with the Secretary of State. A trade name is a name other than the limited liability company name.

The registration of the Trade Name Registration:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the name of the limited liability company using the name can be identified.

Foreign Limited Liability Company

A foreign limited liability company is one that has filed articles of organization under laws other than the laws of North Dakota. "Foreign" refers to limited liability companies organized in jurisdictions out-of-state as well as out-of-country.

A foreign limited liability company must obtain a certificate of authority from the Secretary of State:

- To transact business in North Dakota; or
- To obtain any license or permit issued according to North Dakota laws.

A foreign limited liability company may obtain a certificate of authority to transact any business purpose except banking, farming, and insurance (insurer backing claims). Insurance agencies selling insurance products may obtain a certificate of authority to transact business.

A foreign limited liability company using a name other than its limited liability company name must comply with the Trade Name Registration requirement as described above.

Farm Limited Liability Company

A farm limited liability company is a legal entity that may be established under North Dakota laws by one or more individuals, but not to exceed fifteen members. Members must be related individuals or one of the following:

- A trust for the benefit of an individual or a class of individuals who are related to every member of the limited liability company within specified degrees of kinship.
- An estate of a decedent who was related to every member of the limited liability company within specified degrees of kinship.

The members must be related within one of the following degrees of kinship:

- Parent;
- Son;
- Daughter;
- Stepson;
- Stepdaughter;
- Grandparent;
- Grandson;
- Granddaughter;
- Brother;
- Sister;
- Uncle;
- Aunt;
- Nephew;
- Niece;
- Great-grandparent;
- Great-grandchild;
- First cousin; or
- The spouse of a person so related.

A farm limited liability company must be engaged in farming which is defined as "cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, or fruit or horticultural products. It does not include production of timber or forest products, nor does it include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services." (N.D.C.C., Section 10-06.1-01, Subsection 1) The farm limited liability company may engage in alternate activities; however, the annual average of at least 65 percent of the limited liability company's gross income over the previous five years shall have been derived from farming or ranching operations. The limited liability company's income from non-farm rent, non-farm royalties, dividends, interest, and annuities cannot exceed 20 percent of the limited liability company's gross income.

A farm limited liability company is created, and otherwise operates and is treated, in the same manner as a limited liability company. However, at the time the articles of organization are filed with the Secretary of State, the farm limited liability company must also provide a report disclosing the following:

- Name of the limited liability company;
- Name and address of the registered agent in North Dakota;
- With respect to each member:
 1. Name and address of each;
 2. Names and addresses and relationships of trusts and estates that own membership interests,

3. Number of membership interests or percentage of membership interests owned by each;
 4. Relationship of each;
 5. Statement whether each is a citizen or permanent resident alien of the United States;
 6. Statement whether each is actively engaged in operating the farm or ranch;
 7. Statement whether each resides on the farm or ranch; and
 8. Statement whether each depends principally on farming or ranching for a livelihood.
- Names and addresses of managers and governors; and
 - Listing of the acreage (hectarage) and location listed by section, township, range, and county of all land in the state owned or leased by the limited liability company and used for farming or ranching.

A farm limited liability company using a trade name in the transaction of business must file a Trade Name Registration with the Secretary of State. A trade name is a name other than the limited liability company name.

The registration of the Trade Name Registration:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the name of the limited liability company using the name can be identified.

Foreign Limited Liability Company

A foreign limited liability company may not engage in the business of farming in North Dakota nor may it hold title to land in North Dakota that is used for farming or ranching.

Professional Limited Liability Company

A professional limited liability company, as the name implies, is a limited liability company made up exclusively of licensed professionals. Licensed professionals are those people who have been legally authorized to provide a professional service to the public that requires a license prior to rendering the service.

A professional limited liability company may render:

- One specific type of professional service and services ancillary thereto; or
- Two or more kinds of professional services that are specifically authorized to be practiced in combination under North Dakota's licensing laws of each of the professional services to be rendered.

A professional limited liability company is created, and otherwise operates and is treated, in the same manner as a general business limited liability company. However, at the time of filing the articles of organization with the Secretary of State, the professional limited liability company must also provide certification from the respective licensing board evidencing licensure of all members.

A limited liability company using a trade name in the transaction of business must file a Trade Name Registration with the Secretary of State. A trade name is a name other than the limited liability company name.

The registration of the Trade Name Registration:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the name of the professional limited liability company using the name can be identified.

Foreign Professional Limited Liability Company

A foreign professional limited liability company is one that has filed articles of organization under laws other than the laws of North Dakota. "Foreign" refers to limited liability companies organized in jurisdictions out-of-state as well as out-of-country.

A foreign professional liability company must obtain a certificate of authority from the Secretary of State:

- To provide professional services in North Dakota; or
- To obtain any license or permit issued according to North Dakota laws.

At the time of registration with the Secretary of State, the professional limited liability company must also provide certification from the respective licensing board evidencing licensure of all members practicing in North Dakota.

A foreign professional limited liability company using a name other than its limited liability company name must comply with the Trade Name Registration requirement as described above.

A corporation is an entity created by one or more persons and granted a charter as legal recognition of a separate entity. The separate entity has its own rights, privileges, and liabilities distinct from those of its shareholders. A corporation exists only by virtue of law, and has only those powers conferred on it by statutes, its articles of incorporation, bylaws of the corporation, and the resolutions and decisions of its shareholders. A corporation enjoys inherent qualities:

- Limited liability;
- Transferability of ownership;
- Possible tax advantages; and
- "Immortality", unless dissolved or established for a specific period.

A corporation may hold property perpetually without the intricacies of conveyances regardless of the succession of shareholders or members.

Domestic Business Corporation

A domestic business corporation is one that has filed articles of incorporation with North Dakota's Secretary of State according to North Dakota's Business Corporation Act (N.D.C.C., Chapter 10-19.1). Corporate existence commences when the articles of incorporation are filed, or at a later date specified in the articles of incorporation, but not later than ninety days from the date of filing.

A business corporation is formed for the purpose of generating profit for shareholders. It may be formed for any business purpose except banking, farming, and insurance (insurer backing claims). Insurance agencies selling insurance products may be formed as a business corporation.

A corporation using a trade name in the transaction of business must file a Trade Name Registration with the Secretary of State. A trade name is a name other than the corporate name.

The registration of the Trade Name Registration:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the name of the corporation using the name can be identified.

Foreign Corporation

A foreign corporation is one that has filed articles of incorporation under laws other than the laws of North Dakota. "Foreign" refers to corporations incorporated in jurisdictions out-of-state as well as out-of-country.

A foreign corporation must obtain a certificate of authority from the Secretary of State:

- To transact business in North Dakota; or
- To obtain any license or permit issued according to North Dakota laws.

A foreign corporation may obtain a certificate of authority to transact any business purpose except banking, farming, and insurance (insurer backing claims). Insurance agencies selling insurance products may obtain a certificate of authority to transact business.

A foreign corporation using a name other than its corporate name must comply with the Trade Name Registration requirement as described above.

Farm Corporation

A farm corporation is a legal entity that may be established under North Dakota laws by one or more individuals, but not to exceed fifteen shareholders. Shareholders must be related individuals or one of the following:

- A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the limited liability company within specified degrees of kinship.
- An estate of a decedent who was related to every shareholder of the corporation within specified degrees of kinship.

The shareholders must be related within one of the following degrees of kinship:

- Parent;
- Son;
- Daughter;
- Stepson;
- Stepdaughter;
- Grandparent;
- Grandson;
- Granddaughter;
- Brother;
- Sister;
- Uncle;
- Aunt;
- Nephew;
- Niece;
- Great-grandparent;
- Great-grandchild;
- First cousin; or
- The spouse of a person so related.

A farm corporation must be engaged in farming which is defined as "cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, or fruit or horticultural products. It does not include production of timber or forest products, nor does it include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services." (N.D.C.C., Section 10-06.1-01, Subsection 1) The farm corporation may engage in alternate

activities; however, the annual average of at least 65 percent of the corporation's gross income over the previous five years shall have been derived from farming or ranching operations. The corporation's income from non-farm rent, non-farm royalties, dividends, interest, and annuities cannot exceed 20 percent of the corporation's gross income.

A farm corporation is created, and otherwise operates and is treated, in the same manner as a general business corporation. However, at the time the articles of incorporation are filed with the Secretary of State, the farm corporation must also provide a report disclosing the following:

- Name of the corporation;
- Name and address of the registered agent in North Dakota;
- With respect to each shareholder:
 1. Name and address of each;
 2. Names and addresses and relationships of trusts and estates that own shares;
 3. Number of shares or percentage of shares owned by each;
 4. Relationship of each;
 5. Statement whether each is a citizen or permanent resident alien of the United States;
 6. Statement whether each is actively engaged in operating the farm or ranch;
 7. Statement whether each resides on the farm or ranch; and
 8. Statement whether each depends principally on farming or ranching for a livelihood.
- Names and addresses of officers and directors;
- Listing of the acreage (hectarage) and location listed by section, township, range, and county of all land in the state owned or leased by the corporation and used for farming or ranching.

A farm corporation using a trade name in the transaction of business must file a Trade Name Registration with the Secretary of State. A trade name is a name other than the corporate name.

The registration of the Trade Name Registration:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the name of the corporation using the name can be identified.

A foreign corporation may not engage in the business of farming in North Dakota nor may it hold title to land in North Dakota that is used for farming or ranching.

Professional Corporation

A professional corporation, as the name implies, is a corporation made up exclusively of licensed professionals. Licensed professionals are those people who have been legally authorized to provide a professional service to the public that requires a license prior to rendering the service.

A professional corporation may render:

- One specific type of professional service and services ancillary thereto; or
- Two or more kinds of professional services that are specifically authorized to be practiced in combination under North Dakota's licensing laws of each of the professional services to be rendered.

A professional corporation is created, and otherwise operates and is treated, in the same manner as a general business corporation. However, at the time of filing the articles of incorporation with the Secretary of State, the professional corporation must also provide certification from the respective licensing board evidencing licensure of all shareholders.

A professional corporation using a trade name in the transaction of business must file a Trade Name Registration with the Secretary of State. A trade name is a name other than the corporate name.

The registration of the Trade Name Registration:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the name of the corporation using the name can be identified.

Foreign Professional Corporation

A foreign professional corporation is one that has filed articles of incorporation under laws other than the laws of North Dakota. "Foreign" refers to corporations organized in jurisdictions out-of-state as well as out-of-country.

A foreign professional corporation must obtain a certificate of authority from the Secretary of State:

- To provide professional services in North Dakota; or
- To obtain any license or permit issued according to North Dakota laws.

At the time of registration with the Secretary of State, the professional corporation must also provide certification from the respective licensing board evidencing licensure of all members practicing in North Dakota.

A foreign professional corporation using a name other than its corporate name must comply with the Trade Name Registration requirement as described above.

Cooperative Association

North Dakota law defines a cooperative as "an association..." incorporated by five or more adults, one of which must be a North Dakota resident. A cooperative is a business like any other business, but in some ways very unique. A cooperative belongs to the people with a common purpose who use it; people who have organized to provide themselves with goods or services they need. It operates for the benefit of its members or its stockholders.

The members or stockholders:

- Share equally in the control of the cooperative;
- Meet at regular intervals;
- Review detailed reports; and
- Elect directors from among themselves. The directors elect their officers and hire management to manage the day-to-day affairs in a manner that serves the members' or stockholders' interests.

A cooperative may be formed for any business purpose except banking and insurance (insurer backing claims). Some of the most common business purposes pursued by existing cooperatives include:

- Utilities and cable T.V. services;
- Marketing of agricultural and other products;
- Equipment, hardware and farm supplies;
- Child care;
- Credit and personal financial services; and
- Employment.

Domestic Cooperative Association

A domestic cooperative is one that has filed articles of incorporation with North Dakota's Secretary of State according to North Dakota's Cooperative Associations Act (N.D.C.C., Chapter 10-15). Cooperative existence commences when the articles of incorporation are filed, or at a later date specified in the articles of incorporation.

A cooperative using a trade name in the transaction of business must file a Trade Name Registration with the Secretary of State. A trade name is a name other than the cooperative name.

The registration of the Trade Name Registration:

- Affords exclusive right to that name in the State of North Dakota. No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the name of the cooperative association using the name can be identified.

Foreign Cooperative Association

A foreign cooperative association is one that has filed articles of incorporation under laws other than the laws of North Dakota. "Foreign" refers to cooperatives incorporated in jurisdictions out-of-state as well as out-of-country.

A foreign cooperative association must obtain a certificate of authority from the Secretary of State to transact business in North Dakota. A foreign cooperative association may obtain a certificate of authority to transact any business purpose except banking and insurance (insurer backing claims).

A foreign cooperative association using a name other than its cooperative association name must comply with the Trade Name Registration requirement as described above.

Forms

Forms for business entity filings with the Secretary of State can be obtained by:

- Accessing the Secretary of State's website at www.state.nd.us/sec;
- Calling the Secretary of State's Fax-on-Demand service by calling 701-328-0120;
- Calling the Secretary of State's Business Division at 701-328-4284 or 800-352-0867 (Ext 84284);
- Email to sosbir@state.nd.us;
- Faxing a request to the Secretary of State at 701-328-2992; or
- Mailing request to:

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